

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

IN THE MATTER OF *ANAMARIE GRAHAM*,
KRYSTAL GRAHAM, and *DYLAN ADAMS*,

Minors,

Case No. 2004-046314-NA

OPINION AND ORDER

This matter comes before the Court on the Michigan Department of Human Service's¹ ("DHS") Petition to Terminate the Parental Rights of the natural mother, Rhonda Adams, and natural father, Dennis Graham, relating to their children, Anamarie², DOB 2/13/1997, Krystal Graham, DOB 5/26/1998, and Dylan Adams, DOB 11/29/2000, who are minor children within the jurisdiction of this Court. Rhonda Adams is also natural mother to two other children, Jonathan Miscovich, DOB 10/18/2002, and Skylar LaValley, DOB 10/25/2005. Before trial, the Court granted the Petitioner's motion to dismiss the termination petition as it pertains to Jonathan and Skylar who are in the custody of their respective fathers.

A bench trial was conducted on July 27, 2006. Testimony was presented and exhibits were admitted into evidence. Specifically, Lindsey Green the DHS caseworker in this case testified for the Petitioner. No other witnesses testified. The Petitioner introduced as exhibits Petition A, dated July 24, 1998; Petition B, dated April 17, 1999; and the current Petition C, dated June 23, 2004. Counsel for the natural mother introduced a letter dated July 25, 2006,

¹ The Michigan Department of Human Services was formerly known as the Michigan Family Independence Agency.

² Anamarie's name is spelled several different ways in the court file and pleadings; the Court will use the initial spelling for consistency.



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from Laura S. Henderson, clinical therapist for Macomb Family Services, Inc. The natural mother was present with counsel at trial.

The natural father's counsel appeared at trial, but the natural father did not. The caseworker, Lindsey Green, testified that two letters had been sent return receipt requested on July 24, 2004, and August 4, 2004, to the natural father informing him of the current petition, while he was incarcerated with the Michigan Department of Corrections. Green testified that she received return receipt for those letters in November of 2004. The letters advised the natural father of the proceedings and instructed him to contact her. Green testified that she received a letter from the natural father on April 14, 2005.

Counsel for the natural father indicated that he sent several letters to him, which were not returned to his office. Counsel further stated he wrote a letter dated May 3, 2006, to the address provided by the Michigan Department of Corrections, and his client wrote back indicating he would help with the trial. Counsel for the natural father stated that he does not have a subsequent address, but that he does have a contact phone number. He also tried to call the natural father prior to trial. Counsel for the natural father stated that he also tried to contact by phone his client on the date of trial as well. The Court is persuaded that reasonably diligent efforts have been made to provide for the natural father's appearance, but he has failed to appear for trial or at any other proceedings involving these children. The Court therefore rules that proper legal notice was given to the natural father and the Court may proceed with the termination of parental rights in the absence of the natural father, since a reasonably diligent effort has been made to secure his presence.

After hearing the testimony presented and reviewing the exhibits admitted into evidence, the Court makes the following findings of fact and conclusions of law as required by MCR 3.977(H).

Findings of Fact

The Court may consider all hearings conducted pursuant to Section 12 as a single continuous proceeding. Therefore, evidence admitted at any one hearing may be considered evidence in all subsequent hearings. The trial court may also take judicial notice of its court file. See MRE 201. For the record, the Court will summarize below the prior hearings and decisions which are relevant to this decision.

On July 24, 1998, the first petition ("Petition A"), pertaining to then one-year-old Anamarie and 8-week-old Krystal, was filed by the Michigan Family Independence Agency. The petition alleged that on July 23, 1998, the worker entered the home and it was found to be in complete disarray. Molded food was found in the refrigerator. Clothing, food, garbage, and toys cluttered the home, leaving no walk through space. The home had a terrible odor. The children and their clothing were filthy. In addition, the natural father did not pay child support, had warrants for his arrest, and provided minimal emotional care. The natural father left the scene before police or the worker could talk to him. The children were placed in temporary foster care until suitable relative placement could be found. Supervised visitation was granted to the natural mother. The natural father was served with Petition A in the Macomb County Jail. On September 1, 1998, Referee Carol Juneau held an adjudication hearing. The Court dismissed the petition and terminated jurisdiction and returned the children to the custody and care of their mother.

The second petition ("Petition B") was filed on April 17, 1999, after a preliminary hearing. The petition alleged that on April 16, 1999, the natural mother was arrested for retail fraud at Meijer's in Sterling Heights, with the children present. While the natural mother was apprehended, the natural father fled on foot with Anamarie. Thereafter, both Anamarie and Krystal were again taken into temporary custody.

Further, that on April 15, 1999, the home was found to be filthy and a risk to the children's health. Specifically, Krystal was asleep in a port-a-crib with a filthy pillow and blanket. There was clutter piled on every surface in the living room and kitchen. The floor was reportedly filthy and covered with debris. The kitchen sink contained dirty dishes, food, and floating garbage. Dirty clothing was observed in every room. The laundry room reportedly was so full of clutter and dirty clothes that it was difficult to enter. Additionally, the bathroom door was locked and the mother refused to open the door for the worker to view. The petition indicated that two months earlier, a caseworker had visited the home, taking pictures, which showed that the home in the same condition. In addition, the yard was cluttered with junk and dog feces. The family vehicle also was filthy and full of debris inside, including two filthy car seats.

The petition notes that the natural mother cleaned marginally and agreed to work with the Family Independence Agency - Prevention Services. However, natural mother later refused services and visits. Further, the petition provided that the natural mother has no legal income. Natural mother admitted to being depressed and overwhelmed and failed to seek treatment.

Petition B also alleged that the natural father had recently been released from jail, but the natural mother refused to contact him to assist in resolving the problems because "he would be mad at her" and she refused to give his phone number. The petition noted that the natural mother

was unwilling or unable to make a plan to correct the filthy conditions or to voluntarily place the children with relatives.

On May 11, 1999, a pre-trial hearing was held. The natural mother pled no contest to amended Petition B and the children were found to be temporary court wards. The children were continued in their current foster care placement under the supervision of the Michigan Family Independence Agency and natural mother was allowed to have supervised visits. The natural father's visitation was suspended until he appeared in court.

On June 15, 1999, a pretrial hearing was held as to the natural father. The Court entered a default, as the natural father voluntarily failed to appear after service. The natural father's non-appearance being evidence of further neglect of the children, the children were to continue as temporary court wards.

On July 28, 1999, a special review hearing was held, placing the children temporarily with relatives. The children were returned to the natural mother's care on March 8, 2002.

On June 23, 2004, the third petition ("Petition C") was filed. In addition to Anamarie and Krystal, this petition included Dylan Adams and Jonathan Miscovich, born November 29, 2000 and October 18, 2002, respectively.

The third petition alleged that on June 4, 2004, Krystal, Dylan and Jonathan were found wandering alone in their neighborhood and that Jonathan was almost hit by a car. The Warren police took the children home and attempted to wake the mother up. According to the police, it took the natural mother fifteen minutes to answer the door. On that date, Children's Protective Services (herein after referred to as "CPS") and the Warren Police Department observed the home and found it to be unsuitable for the children. The home was found to be filthy. Clothes, open garbage, and dirty dishes were found everywhere in the home. Dishes were piled up in the

kitchen. The bathroom appeared usable, as feces was found in the toilet without water to flush it down. It was evident that the home had been in this condition for a long period of time.

The children were removed on the same day, at which time CPS discovered that the children had head lice. The petition alleged that the natural mother was aware of their condition but did nothing to rectify it. The petition further noted that the natural father, Dennis Graham, of Anamarie, Krystal, and Dylan had minimal or no contact with his children, and his whereabouts were unknown at the time of the petition. The natural mother refused to give CPS his contact information. The natural father of Jonathan, Gary Miscovich, was aware of the housing conditions and continued to allow his son Jonathan to reside in the home.

The children were again placed in foster care on June 5, 2004, and were made temporary court wards on August 4, 2004. A dispositional hearing was held on October 4, 2004. Natural father Dennis Graham failed to appear. The natural mother and Jonathon's natural father signed the Parent Agency Agreement on this date as well.³

On July 13, 2005, based upon the natural mother's non-compliance with the Parent Agency Agreement and natural father's abandonment, the Petitioner moved to terminate the parental rights of both.

Petitioner argues that while the natural mother appears to love her children, she has been unable to provide an appropriate home environment for them. Petitioner asserts that respondent-parents have had three petitions brought before this Court over six years. Petitioner avers the natural parents have had many opportunities to address and prevent the conditions which brought their children into care, and yet those conditions continue to exist. Petitioner suggests the natural

³ Jonathon is still a temporary ward of the Court and is in his natural father's custody and care. Skylar LaValley was born on October 25, 2005 and taken into foster care on November 9, 2005 pursuant to Petition D. Skylar remains a temporary ward and is in her natural father's custody and care.

parents have had a year-and-a-half since the most recent petition was brought to participate in, and benefit from, a range of services including counseling, anger management, domestic violence education, as well as meet the requirements contained in the Parent Agency Agreement. Petitioner asserts that despite the myriad of services, the natural parents have failed to sufficiently benefit from those services. Petitioner also contends that the parents have failed to obtain and maintain safe, suitable housing that would warrant return of the children and they have failed to maintain a legal source of income.

At trial, petitioner further noted that this case has been continuing for eight years, over which time the children have spent more time in foster care than with their natural parents. Petitioner maintains the clear and convincing evidence shows there is no reasonable expectation that the parents will be able to provide proper care and custody. Petitioner notes that trial was postponed nine months in this case, in an attempt to find some other avenue for resolution, but no progress was made.

The natural mother argues that she has substantially complied with the Parent Agency Agreement. Further, the natural mother contends the latest Petition C was basically for environmental neglect or "a dirty house." The natural mother asserts that the Wayne County Protective Services, who investigated the natural mother's home in relation to a petition brought concerning her youngest child Skylar, found that the natural mother's home was acceptable. The natural mother also offered a letter dated July 25, 2006, from her counselor Laura S. Henderson, LMSW, at Macomb Family Services, Inc., indicating that she is regularly attending therapy and is making satisfactory progress toward her treatment goals.

Conclusions of Law

The party seeking to terminate parental rights has the burden of proving that a statutory criterion for termination has been fulfilled. MCR 3.977(A)(3). Further, the party seeking termination must prove parental unfitness according to the standards set forth under Section 19B of the Juvenile Code. A termination of parental rights is improper where it has only been shown that the child would be "better off" in foster care. *In re Atkins*, 112 Mich App 528, 541; 316 NW2d 477 (1982).

The Court may terminate natural mother's and natural father's parental rights if it finds by clear and convincing evidence that their conduct meets the statutory grounds outlined in MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), or MCL 712A.19b(3)(j).⁴

As referenced above, the "clear and convincing evidence" standard is necessary to satisfy the requirements of due process under the Fourteenth Amendment to the United States Constitution. *Santosky v Kramer*, 455 US 745, 767; 102 S Ct 1388; 71 L Ed 2d 599 (1982).

This standard has been explained as follows:

Clear and convincing evidence is defined as evidence that produces in the mind of the trier of fact a firm belief or conviction as to the truth of allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing despite the fact that it is uncontroverted. *Kefgen v Davidson*, 241 Mich App 611, 625; 617 NW2d 351 (2000).

Petitioner first argues that the termination of parental rights is appropriate as to both natural mother and natural father pursuant to MCL 712A.19b(3)(c), which provides:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

⁴ Initially, the Petitioner also initially moved pursuant to MCL 712A.19b(3)(h), due to the father Dennis Graham having been in prison, but moved to amend at trial based on Graham's release.

- (i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

Petitioner further submits that the termination of parental rights as to both natural mother and natural father is appropriate pursuant to MCL 712A.19b(3)(g), which provides:

- (g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide care and custody within a reasonable time considering the child's age.

Finally, Petitioner asserts that the termination of both natural parents' parental rights is appropriate pursuant to MCL 712A.19b(3)(j), which provides:

- (j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

With regard to MCL 712A.19b(3)(c) the Dispositional Order was entered on July 13, 2004. Thus, Petitioner has met its burden under MCL 712A.19b(3)(c) that 182 days or more have elapsed since that date.

The allegations in Petition C were addressed in the Parent Agency Agreement. The natural mother agreed to comply with all the requirements of the Parent Agency Agreement. A natural parent's failure to substantially comply with a Court ordered case-service plan constitutes evidence that returning the minor child to them may result in a substantial risk of harm to the child's life, physical health, or mental well-being. MCR 5.973(C)(4)(b). Moreover, the requirements under the Parent Agency Agreement comprise part of a Court order that implements the case-service plan. *In re Trejo Minors*, 462 Mich 341, 346; 612 NW2d 407 (2000). It is therefore imperative that the Court engages in an in-depth review of the natural parents' compliance with the Parent Agency Agreement.

Natural Father's Compliance with Parent Agency Agreement

Lindsey Green, the children's current foster care caseworker testified for DHS. With approximately 3½ years of experience, she has been assigned to this family since Petition C was filed.

Green testified that on July 13, 2004, the Court ordered that both parents comply with the Parent Agency Agreement. Natural father was incarcerated from December 21, 2001 through September 17, 2005. Green testified that on August 4, 2004 and November 11, 2004, she sent two registered letters, return receipt requested, containing the Parent Agency Agreement to natural father. Both were sent to the Charles Egeler Correctional Facility, which by standard practice, signs for all correspondence and forwards it to the prisoners. Green further testified that she knew the natural father had received the letters and notice of the proceedings, because natural father wrote her in a letter in response dated April 21, 2005. The letter indicated that natural father wished to sign off on his parental rights to his children, as he and the natural mother were unable to properly care for them. He also inquired on how to arrange visitation with his children. Green testified this was her only contact with natural father.

The Court ordered Parent Agency Agreement contained six goals for both parents. First, each was required to obtain and maintain emotional stability. Second, each should learn and utilize appropriate parenting skills. Third, both parents shall maintain a parent child bond and visit with the children regularly. Fourth, both parents would be required to obtain and maintain a legal source of income for at least six months. Fifth, each parent would have to demonstrate the ability to maintain a safe and suitable home environment. Sixth, each parent would be required to maintain regular contact with DHS.

Green testified that she did not make referrals to the natural father regarding these goals, given his incarceration and his subsequent failure to contact her after his release. Green emphasized that natural father made no attempts to contact her or the DHS, to see his children, or to work on the Parent Agency Agreement. The natural father has had no contact with his children since they came into care, which has been over two years.

The Court finds the natural father, Dennis Graham, has failed to comply with any goal of the Parent Agency Agreement.

Natural Mother's Compliance with Parent Agency Agreement

Green testified that the natural mother signed and received her copy of the Parent Agency Agreement on July 13, 2004.

The natural mother's first goal under the Parent Agency Agreement was to obtain and maintain emotional stability. In this regard, the natural mother was asked to participate in and complete a psychological assessment with Dr. Gary Rasmussen and follow up on all recommendations made by Dr. Rasmussen.

Green testified that the natural mother initially had an evaluation performed in 2004 with Dr. Rasmussen, but gave skewed and defensive answers in an effort to improve her test scores. On June 28, 2005 and July 6, 2005, Dr. Rasmussen conducted a second assessment. Again, the natural mother remained somewhat self-protective and did not make an honest effort in the testing progress. Despite the natural mother's lack of honesty in responding, her abuse/neglect scores were elevated above scale norms, warranting concern for child abuse and neglect potentials. Dr. Rasmussen's report further noted that because of repeated scale score distortions produced by natural mother, no accurate clinical or psychological interpretation could be rendered at that time.

Natural mother was subsequently evaluated by Dr. Ryan. Green testified that it was Dr. Ryan's opinion that the natural mother had a hard time understanding the concepts of parenting. Dr. Ryan recommended that she follow through with the parenting classes and any or all treatment for her claimed closed head injury. Green testified that a fourth psychological and neurological test was performed by Dr. Ryan early in 2006. At this time, Dr. Ryan determined that natural mother "has deficits." Specifically, Green testified that Dr. Ryan believed that natural mother has a hard time understanding concepts and applying them and that she is of low intelligence. The Court is not persuaded that natural mother substantially complied with this goal, as she was not open and honest in the testing, which completely undermined its purpose.

The second goal was to obtain and maintain emotional stability and coping strategies. In this regard, the natural mother was asked to participate in counseling sessions through an approved DHS facility. Natural mother was thereafter required to attend and participate in the sessions and be open and honest with therapist. Natural mother was also asked during the individual counseling sessions, to focus on the specific problems that interfere with her parental role performance, and follow-up on all recommendations made by the therapist.

On November 29, 2004, natural mother was referred both orally and in writing, to New Passages, Inc. both through the mail and in person, but she did not start consistently attending counseling until March of 2005. Thereafter, natural mother attended counseling twice a week, until June of 2005. Green testified that while natural mother missed some sessions, she did try to make up them up. Green stated that in June of 2005 natural mother stopped attending therapy because she became "confused" when her therapist switched office locations and was unable to decide whether to continue with this therapist or see another at the old location. Finally, Green testified, natural mother contacted her in August of 2005 to get back into counseling.

A second referral for counseling was made in August of 2005, but the referral was denied because the natural mother had Medicaid coverage and needed to go through her HMO. Green testified she discussed the insurance issue again with natural mother in September of 2005. Green stated that the natural mother incorrectly insisted that she did not have insurance.

In January 2006, a second referral was provided to the natural mother for counseling through Macomb Family Services. At this point, natural mother's Medicaid coverage had ceased. Natural mother did begin attending bi-weekly therapy sessions in February of 2006. Laura Henderson, her therapist, recommended in June of 2006 that the natural mother remain in counseling. Henderson's written correspondence indicated that the natural mother has been making progress in therapy, particularly in the goals of stress relief and getting insight in taking responsibility for her children. The Court is persuaded natural mother only partially complied with this goal given her failure to engage in counseling for most of 2005.

The natural mother's third goal was to obtain and utilize appropriate parenting skills. Natural mother was asked to complete a parenting skills training seminar with Christine Houghton and provide a certificate of completion, maintain 100% attendance and participation during sessions, be open and honest with therapist, follow up on all recommendations made by Christine Houghton. Natural mother was also required to participate in intensive parenting programs through MSU Extension and Judson Center if asked to do so, and display appropriate parenting skills during each visitation with her children.

Green testified that the natural mother did successfully complete an initial parenting class. However, her instructor recommended that she join a parenting support group, which she failed to do. In order to be compliant, Green testified, natural mother would need to attend, twice a month, until the instructor felt that it was no longer necessary. Green testified that

natural mother stopped attending the parenting support class in approximately March or April of 2006. The Court finds that natural mother substantially complied with this goal.

The fourth goal was to maintain the parent child bond. This was to be achieved by participating in visitation and displaying appropriate parenting skills during visits. Green testified that the natural mother attended the majority of visitations, either at DHS or where the children were placed with relatives. From June of 2004 until September of 2004, natural mother saw Anamarie and Krystal at DHS, then saw them at their placement, every Wednesday for three hours and one day on the weekend for four or five hours. Later, the relatives asked if the visitation could be reduced to one day a week because the children were having behavioral difficulties after the visits. In March of 2005, visitation was reduced to one day a week.

Green testified that during these visits, the natural mother was supposed to do everything that a mother with custody would do, such as put the children to bed and feed them. Unfortunately, the natural mother did not do this. Green testified this resulted in the girls having a hard time waking up the next day for school, and that the children would act out. Green stated that the natural mother admitted to communicating with the children when she was not permitted to - which would also cause the children to act out. In July of 2005, the Court suspended visitations when Petitioner moved to terminate her parental rights. The Court is persuaded that the natural mother only partially complied with this goal. Although she did visit with the children regularly, her failure to utilize appropriate parenting skills and comply with DHS instructions, adversely affected the children.

The fifth goal was to maintain a legal source of income for at least six months. Here, the natural mother was asked to obtain a legal source of income by obtaining employment and to

provide the caseworker with weekly check stubs to verify current employment and income. Natural mother was to contact ARC Services of Macomb to assist her in securing a job.

Green testified that the natural mother never provided proof of having obtained any legal source of income. However, she did apply for Social Security disability benefits in October of 2005. Her request was denied her appeal is pending. Green testified that natural mother receives \$152 per month in food stamps, but has no other income. Green speculated that the natural mother might be receiving support from Skylar's father. Even assuming arguendo, that the natural mother is supported by Skylar's father, the goal was for her to maintain a legal source of income. Further, no verification of Mr. LaValley's income was ever provided. Therefore, the Court finds that the natural mother has failed to comply with this goal.

The sixth goal was to maintain a safe and suitable home environment. Specifically, all the residents of the home must be of strong moral character (free of convicted criminals and sexual offenders) and that environment must be free of domestic violence and illegal substance use. The house must have and maintain legal utility services and proof must be provided to the caseworker. The home must be clean, safe, free of hazards, the floors must be free of sharp objects and mopped, and the house must be free of infestation. The home must have an adequate supply of food. Caseworkers must be allowed to visit and assess the home and the natural mother was required to participate in a program approved by DHS to assist in learning more efficient techniques on how to clean and manage the home.

Green testified that the natural mother has lived at the same address in the City of Warren since the children were taken into care to the present. The home belongs to the natural mother's grandmother and no formal lease agreement exists. At the time the children came into care, Mr. Miscovich lived in the home. He moved out in February of 2005. Also residing in the home was

natural mother's brother, a convicted felon. Thereafter, Mr. LaValley, Skylar's father, came to live in the home.

Green expressed concern that the utilities have not been consistently connected to the home. On June 27, 2006, Green contacted Consumers Energy. Consumers indicated the gas had been cut off for non-payment as of June 4, 2005. Additionally, Consumers indicated that after the gas had been cut off, they visited the home and found that the services were turned on illegally. Consumers shut the gas off a second time. In March of 2006, Consumers again returned to the home and this time placed a lock on the box to prevent tampering. Green testified that natural mother later denied that Consumers turned off the power and locked the box. Natural mother never produced any contrary documentation.

With regard to the other utilities, water was turned on in the home, but there was a balance owing. As of June 27, 2006, DTE reported that electrical services were connected.

On June 6, 2006, Green again did a home check. Green stated the home remains inappropriate for children. Green stated that outside of the house, garbage was overflowing from the yard to the street. Also, for the last several months a pop-up trailer has been sitting in the yard. It has been dismantled and is now spread out in pieces all over the yard, including sharp glass objects. Green stated the yard was a hazard for children. Green further testified that inside the home, nothing had improved. She could barely walk through the home because of the clutter and dishes were again piled up in the sink. Green testified that she had last visited about nine months earlier in September of 2005. At that time the condition was the same, although perhaps the home was a little less cluttered.

Green stated that she recalled attempting to visit three other times from September of 2005 to June of 2006. On one occasion, Green reported that the natural mother was home, and

although Green called her on her cell phone and knocked on the door, she received no answer. Later, the natural mother told Green that she had slept through the knocking. On the second occasion, a gentleman, who turned out to be Mr. LaValley, answered the door but refused to let Green in the home. Green testified that he knew who she was and why she was there, and told her that he was there to try to help natural mother clean up the house. On the third occasion, no one was home. The Court is persuaded that the natural mother has failed to comply with this goal. The goal was set forth two years before the last inspection. It is inexplicable that the conditions would remain the same despite such a lengthy period of time to correct the situation.

The seventh goal was to keep in regular contact with DHS. To fulfill this goal, the natural mother was to report and provide documentation of any progress made on treatment plan, sign any releases necessary for Green to obtain progress reports, provide DHS with any change in contact information, and follow all laws. Green testified that the natural mother failed to comply. She failed to provide documentation regarding her any treatment plan, including providing signed releases so Green could communicate with her treating professionals. Natural mother did however, maintain regular contact with DHS, there being only one occasion during the last two years where the longest period of time without contact was 2-3 weeks. The Court is persuaded that the natural mother did substantially comply with this requirement.

Finally, the eighth goal was for natural mother to provide for her own medical needs. In this regard, she was asked to sign all necessary release of information forms requested by DHS and provide documentation of her medical treatment. Finally, she was required to follow through with all recommendations made by her physician.

Green testified that the natural mother told her at the onset of the Parent Agency Agreement that she suffers from a closed head injury and narcolepsy. As a result, she needs to

see a doctor once a month and to take her medication regularly. Green testified that natural mother never provided any proof that she took her medications. Further, while the natural mother repeatedly told Green that she had signed a release of information for her doctor, Green testified that the doctor told her he did not have a release for natural mother. Further, the doctor insisted *his* release form would need to be signed at *his* office or he would not provide any information. No medical information was every provided to DHS and the natural mother admitted to Green that she had not been to the doctor in the last year. She also admitted to not taking medications. The Court finds that natural mother did not comply with this goal.

Natural mother did complete the required CARE assessment on January 24, 2005. Further, DHS received verification that the natural mother completed an MSU Extension Program on food and nutrition education.

Green recommended the termination of the natural mother's parental rights. Green noted that the children have been in care on three different occasions, spanning eight years. Green testified that the relatives with whom the children are placed note that each time the children are returned to their care, they are more emotionally upset and behind developmentally. Anamarie and Krystal went to James and Bernadette Adams' home when placed in foster care. These relatives report that each time they are returned to them, their behavior is worse than before. Green stated that each time it takes a longer period of time for the children to adjust to their new home and their new rules. Green reports this cycle has resulted in a lack of permanency for the children. She notes that they have spent more time in foster care than with their natural mother. While the natural mother has participated in some aspects of the Parent Agency Agreement, she has not followed through or benefited from others. The housing remains unsafe and inappropriate for these children. Green stressed that the children need permanence and stability.

Termination of Natural Father's Parental Rights

Based upon the Court's careful consideration of all the evidence admitted in this matter, the Court finds that Petitioner has met its burden of proving by clear and convincing evidence that the parental rights of Dennis Graham should be terminated pursuant to the statutory grounds enumerated in MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j).

The natural father has never appeared at any hearing or proceeding in this case. The evidence shows he was contacted while incarcerated. He responded to DHS's letter which included the Parent Agency Agreement, indicating that he was aware of the proceeding. At that time, he expressed his wish to relinquish his parental rights. While he asked for visitation, after his release from the Michigan Department of Corrections, he did nothing to follow up. He has not seen his children in at least two years. Additionally, there is no proof on the record that he could substantively meet any of the goals of the Parent Agency Agreement. For all of the above reasons, this Court finds that all of the conditions that led to the instant adjudication continue to exist, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the children's tender age. MCL 712A.19b(3)(c)(i). In addition, the record is clear and convincing that the natural father is no position to provide for the proper care and custody of Anamarie, Krystal and Dylan, and there is no reason to expect that he will be able to do so. MCL 712A.19b(3)(g). Finally, all of the evidence submitted for this Court's consideration proves clearly and convincingly that if these children were returned to his care, it is reasonable to expect that the children would be harmed. MCL 712A.19b(3)(j).

Termination of Natural Mother's Parental Rights

Based upon the Court's careful consideration of all the evidence admitted in this matter, the Court finds that Petitioner has met its burden by clear and convincing evidence that the parental rights of Rhonda Adams should be terminated pursuant to the statutory grounds enumerated in MCL 712A.19b(3)(c)(i), MCL 712A.19b(3)(g), and MCL 712A.19b(3)(j).

The natural mother essentially sought to maintain contact with her children, regularly appearing for her supervised visits either at her relatives' home or DHS. The visits were not always deemed appropriate, however, as natural mother failed to utilize the skills she learned in her parenting classes. She also spoke (out of turn) to the children regarding inappropriate topics, contrary to instructions. The natural mother did complete her CARE assessment and a food and nutrition program through MSU Extension, items not specifically set forth in the Parent Agency Agreement.

However, what remains strikingly clear is that the natural mother is simply unable to provide an appropriate home for the children. The evidence introduced compels a finding that this situation is well beyond a messy home. The testimony describes unsafe and unsanitary conditions. When the children were in her care, they were dirty and had head lice. At one point, a toilet was out of order and soiled. The yard remained a hazard, being strewn with glass and garbage. The eldest two children were first removed from the home for these same reasons in 1998, eight years ago. Despite the earnestness with which she expresses caring for her children, the natural mother has simply been unable to make and sustain a change in the children's home environment. This has wreaked havoc on the children's lives. They now have spent more time in foster care than with their mother.

Additionally, the natural mother demonstrated that she has problems taking care of her own basic medical and employment needs. Even when she is covered by insurance, she has trouble seeing her doctor on a regular basis. Ms. Green testified that the natural mother has not followed through with utilizing assistance offered to her to help run her household. The natural mother's inability to take good care of herself leads the Court to believe she is simply incapable of taking care of these children. For all of the above reasons, this Court finds that all of the conditions that led to the instant adjudication continue to exist, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the children's tender age. MCL 712A.19b(3)(c)(i). In addition, there is clear and convincing evidence that the natural mother is in no position to provide for the proper care and custody of the children, and there is no reason to expect that she will be able to do so. MCL 712A.19b(3)(g). Finally, all of the evidence submitted for this Court's consideration proves clearly and convincingly that if Anamarie, Krystal and Dylan were returned to her care, it is reasonable to expect that the children would be harmed. MCL 712A.19b(3)(j).

Reunification

Inasmuch as the Court has found that there are statutory grounds for termination of parental rights, MCL 712A.19b(5) requires that the Court order the termination of parental rights, as well as order that additional efforts for reunification not be made, unless the Court finds that the termination of parental rights is not clearly in the children's best interests.

A parent does not have the burden of producing evidence that termination of his or her parental rights is clearly not in the child's best interest. The Court may consider evidence introduced by any party when determining whether termination is in the child's best interests. Further, even where no best interest evidence is offered after a ground for termination has been

established, subsection 19b(5) permits the court to find from the evidence on the whole record that termination is clearly not in the child's best interest. *In re Trejo Minors*, 462 Mich 341, 353; 612 NW2d 407 (2000).

The Court is allowed to consider all relevant and material evidence, including oral and written reports, in determining whether termination of parental rights is in a child's best interests. And although the Juvenile Code does not contain a definition of "best interest of a child," both the Child Custody Act and the Adoption Code contain lists of factors that the court may use, including but not limited to the following:

- (a) *The love, affection, and other emotional ties existing between the parties involved and the child.* The natural mother clearly loves her children. However, given the fact that the children have been in the care of relatives or foster parents as long or longer than in her care, the strength of their bond is questionable. Natural father failed to appear in this case and has had no contact with his children for at least two years (since the children came into care) and likely much longer given his history of incarceration. The Court is convinced that no bond exists between these children and their natural father.
- (b) *The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.* No evidence was offered as to the natural father. As to the natural mother, the testimony was consistent and unrefuted that when the children were in her care, their behavioral and educational development slowed significantly.
- (c) *The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the*

laws of this state in place of medical care, and other material needs. The testimony was clear and convincing that the natural mother has had significant difficulty providing for hers and the children's material needs. The testimony was unrefuted that the natural mother has been unable to provide the children with clean clothes, fresh food, and a sanitary and safe home. The home environment was not suitable or appropriate for an adult let alone three young children. She is unable to obtain or maintain legal employment. Nor has she sought assistance in locating a job. She refused assistance in learning how to manage her home, but did voluntarily attend a nutrition class. Nothing in this record demonstrates that the natural mother will ever be able to provide for even the most basic needs of her children. The testimony regarding the natural father is that he had little input into the children's lives before the filing of the latest petition and no contact since.

- (d) *The length of time the child has lived in a stable satisfactory environment, and the desirability of maintaining continuity.* The testimony was clear that while the children were in their natural mother's care during June of 2004, several were found wandering the street, and one was almost was hit by a car. Upon returning the children, the Warren police had to wait fifteen minutes for the natural mother to answer the door. The natural mother has been unable to provide a stable satisfactory environment. The children have now been in their respective foster care for two years, on this petition, and cumulatively more years in foster care than in their mother's care. Their natural mother has failed to provide a stable, satisfactory environment for this children. Again, no testimony was offered as to natural father. Natural father, by his own actions has all but abandoned these children and never provided a stable or satisfactory environment.

- (e) *The permanence, as a family unit, of the existing or proposed custodial home or homes.*

Scant testimony was provided regarding the natural mother's extended family, beyond the mention that she resides in her grandmother's home and her own mother is apparently in the area. The natural mother's aunt and uncle have provided foster care to two of the three children. However, different male figures have resided in the home during the children's lives including Jonathon's natural father and Skylar's natural father. No testimony was offered as to natural father.

- (f) *The moral fitness of the parties involved.* Natural mother was apprehended on April 14, 1999, for retail fraud at a Meijer, while she had the children with her. The natural father fled with Anamarie. Additionally, Consumers Energy indicated someone at natural mother's home illegally reconnected the gas line without payment.

- (g) *The mental and physical health of the parties involved.* Natural mother claims to have physical problems and she has applied for disability benefits which have been initially denied. Natural mother also asserts she has a closed head injury for which she requires medication and monthly appointments, which she does not keep. Dr. Ryan's neurological examination revealed "some deficits" but gives no more details. No testimony was offered as to natural father.

- (h) *The home, school, and community record of the child.* No evidence was offered for the Court's consideration.

- (i) *The reasonable preference of the child, if the court considers the child to be of sufficient age to express preference.* This factor is not relevant to this Court's determination.
- (j) *The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.* No testimony was offered in this regard on behalf of either the natural mother or natural father.
- (k) *Domestic violence, regardless of whether the violence was directed against or witnessed by the child.* No direct testimony was offered in this regard.
- (l) *Any other factor considered by the court to be relevant to a particular matter.* No other factors have been considered by this Court.

Based upon a review of all the evidence submitted in this matter for consideration, this Court is persuaded that termination of natural mother's and natural father's parental rights is clearly in the best interest all three children. Although, the Court is convinced that the natural mother loves her children, that love fails to overcome the significant hurdles that she has failed to clear in the last two years. Love is just not enough. Children need a roof over their heads, food on the table, shoes on their feet, a mother or father who are emotionally stable and healthy, to ensure a safe and nurturing home. Anamarie, Krystal and Dylan are entitled to that. Unfortunately both the natural mother and the natural father have been unable to provide even for their most basic needs.

Conclusion

For the reasons set forth above, the Court GRANTS the Department of Human Services Petition to Terminate the Parental Rights of the natural mother, Rhonda Adams, and natural father, Dennis Graham, relative to their children, Anamarie Graham, DOB 02/13/1997, Krystal Graham, DOB 05/26/1998, and Dylan Adams, DOB 11/29/00, minor children within the jurisdiction of this Court.

Therefore, the parental rights of Rhonda Adams and Dennis Graham are HEREBY TERMINATED.

Additional efforts at reunification with the respondent parents will not be made. The minor children will be placed in the permanent custody of the Court and committed to the Michigan Children's Institute of the DHS for adoptive planning, supervision, care, and placement.

A Review Hearing will be set within 90 days from today's date with Referee Diane Femminineo. The Court appointed attorney for Dennis Graham is hereby discharged. In compliance with MCR 2.602(A)(3), this *Opinion and Order* does not resolve the last pending claim or close this case.

IT IS SO ORDERED.

TRACEY A. YOKICH
CIRCUIT JUDGE

Tracey A. Yokich
Circuit Court Judge

SEP - 1 2006

DATED: September 1, 2006

cc: Darra Slanec, Attorney for Petitioner
Donald M. Aubrey, Attorney for Natural Mother
John F. Gorniak, Attorney for Natural Father Graham
Mayssa Attia, Attorney for the Minor Children

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK
BY: [Signature] Court Clerk

Advice of Rights

The respondents in this matter, the natural mother and natural father are hereby advised that they are entitled to appellate review of this Court's decision terminating their parental rights. If either parent is financially unable to retain/secure an attorney to file an appeal, the Court will appoint an attorney to represent you. Further the Court will furnish the attorney with portions of the transcript and record necessary to file the appeal.

Your request for appointment of an attorney must be made within 21 days. Finally, both parents have the right to file a denial of release of identifying information, a revocation of a denial of release, and to keep current the respondent's name and address as provided in MCL 710.27.

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

HERITAGE PLACE WEST
CONDOMINIUM ASSOCIATION,

Plaintiff,

Case No. 2006-0659-CH

vs.

WILLIAM DIEDERICH and
MARTHA DIEDERICH,

Defendants.

OPINION AND ORDER

Defendants moved for summary disposition pursuant to MCR 2.116(C)(10). In response, plaintiff requests the Court grant its motion for summary disposition under MCR 2.116(I)(2).

I

Defendants are a married couple, with no other persons residing with them, living in Heritage Condominium Place West in Shelby Township, Michigan. The condominium has a two-car garage. According to the by-laws and the rules and regulations of the Condominium Association, co-owners are allowed to have up to three vehicles that are used for daily transportation, and are to be housed in the garage when not in use, or in the event of a third vehicle, housed in additional courtyard parking. The three vehicles in question include a Ford F250 pickup truck, a black Corvette, and a sedan-type vehicle, brand unknown. It is asserted that defendant Martha Diederich uses the Ford pickup truck for daily transportation, to and from work. It is further asserted that due to lack of space, the pickup could not be parked in the garage along with one of the other vehicles, so it has been routinely parked in the courtyard parking since it was purchased in 2001. In June, 2005, as a result of complaints about defendants' truck being parked in the courtyard parking every night, defendants were notified by the Community



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Manager that defendants were not complying with the terms of the by-laws and rules and regulations, and requested that defendants comply. Defendants contend they are not in violation of the by-laws; plaintiff contends they are. To this end, plaintiff filed a complaint for injunctive relief and damages on February 10, 2006.

II

A motion brought under MCR 2.116(C)(10) is considered in a light most favorable to the nonmoving party to determine whether a genuine issue of material fact exists that precludes granting judgment as a matter of law to the moving party. *Laier v Kitchen*, 266 Mich App 482, 486-487; 702 NW2d 199 (2005). Once the moving party has met the initial burden by supporting its position with documentary evidence, the burden shifts to the nonmoving party to establish the existence of a genuine issue of fact. *Pena v Ingham Co Rd Comm*, 255 Mich App 299, 310; 660 NW2d 351 (2003). A genuine issue of fact exists when the record leaves open an issue on which reasonable minds could differ. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

By stipulation of the parties, discovery has been extended to September 5, 2006. Generally, a motion for summary disposition under MCR 2.116(C)(10) is premature when discovery on a disputed issue has not been completed. *Colista v Thomas*, 241 Mich App 529, 537; 616 NW2d 249 (2000). Summary disposition may be proper before the close of discovery if there is no reasonable chance that further discovery will result in factual support for the nonmoving party. *Id* at 537-538.

Pursuant to MCR 2.116(I)(2), the trial court may grant summary disposition to the nonmoving party if it is entitled to judgment as a matter of law. *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

III

Both plaintiff and defendants concentrate on Article VI, Section 8 of the Amended and Restated Bylaws as the controlling section of the condominium documents for purposes of this litigation. Plaintiff submits defendants are in violation of said section and are entitled to recoup all attorney fees incurred in connection with this litigation. Defendants assert they are not in violation, and they request an award of attorney fees.

Article VI, Section 8 of the Amended and Restated Bylaws reads:

No trailers, house trailers, commercial vehicles, boat trailers, boats, camping vehicles, camping trailers, motor homes, snowmobiles, snowmobile trailers, or vehicles other than automobiles, may be parked or stored upon the premises of the Condominium, unless inside closed garages. Inoperable vehicles, unlicensed vehicles, and stored vehicles (being those vehicles which are not used for daily transportation) shall not be maintained on the Condominium Premises. Commercial vehicles and trucks shall be deemed to include those vehicles with visible signage, tools, or other equipment typically used in trades or businesses, shall not be parked in or about the Condominium (except as above provided) unless while making deliveries or pickups in the normal course of business. This shall not be meant to exclude vans and pickup trucks used as passenger vehicles. All vehicles are to [sic] parked in garages whenever possible and no more than three vehicles per Unit may be kept in the Condominium. . . .

The key phrase on which plaintiff relies is “... or vehicles other than automobiles, may be parked or stored upon the premises of the Condominium, unless inside closed garages.” Plaintiff submits that there is no ambiguity in that statement – it clearly means that the only vehicles that may be parked on the Condominium courtyard parking are automobiles, and a pickup truck is not an automobile, therefore it must be parked inside a closed garage. Defendant argues that because Section 8 does not specifically prohibit pickup trucks from parking in courtyard spaces, then it can be assumed that they are not prohibited.

Plaintiff emphasizes a significant point that defendant ignores. Defendant Martha Diederich has signed an affidavit in which she attests she uses the pickup for daily transportation, but there is no affidavit, or even discussion in defendants’ brief as how the other two vehicles are

used. There are only two people living in the condominium. One has sworn that she drives the pickup daily. The question becomes – who uses the other two vehicles parked in the garage on a daily basis? Defendant William Diederich apparently works in Troy, and presumably drives one of the two other vehicles to work, but quite obviously cannot drive both at the same time, on a daily basis. The Court is convinced that reasonable factfinders could not disagree that one of the vehicles parked in the garage – most likely the Corvette – is not used on a daily basis, and the garage is used as a place of storage for the vehicle, in violation of Article VI, Section 8 which states that “.... stored vehicles (being those vehicles which are not used for daily transportation) shall not be maintained on the condominium premises.”

Defendant maintains that the pickup “cannot be reasonably parked inside the defendants’ garage.” However, as demonstrated by plaintiff, that does not mean it is *not possible* to park the truck in the garage, just unreasonable. Plaintiff has demonstrated how a Ford F250 pickup truck and another vehicle can easily fit into a two car garage, and has provided photographs depicting this reality.

Defendants argue that both the by-laws and the rules and regulations contemplate that some owners may have to park a vehicle outside, as most condominium garages are two-car garages. Aside from the rules already cited herein, defendants cite to the Co-Owner Handbook, page 12, where it is stated, “Parking of trucks or commercial vehicles is prohibited unless said vehicles are parked in the garage.” There is nothing ambiguous about this statement as the use of the conjunctive “or” clearly substitutes the character of the two subject vehicles. A commercial vehicle can be any kind of means of transportation with signage, but a truck is a truck.

Defendants also argue that in the introduction of the condominium owner handbook there is an explanation of what governs in the event of a conflict in the rules. Defendants contend that pursuant to this document, any conflict in rules shall be governed by the by-laws, and the

Michigan Condominium Act. The Michigan Condominium Act, MCL 559.165 merely states that each unit co-owner, tenant, or nonco-owner occupant shall comply with the master deed, by-laws, and rules and regulations of the condominium project and this act.

The Court has examined all the rules and regulations, by-laws, amendments, as well as the owner handbook, and concludes that even though the wording regarding vehicles and proper parking may differ, they all boil down to the basic rule that only automobiles are permitted to be parked in the courtyard spaces, and no unit garage is to be used for storing a vehicle not in daily use. Therefore, defendants are not in compliance with the rules and regulations as they relate to defendant Martha Diederich's pickup truck, and their motion for summary disposition is appropriately denied.

IV

Plaintiff has demonstrated through substantial documentary evidence that they are entitled to relief under MCR 2.116(I)(2). With respect to plaintiff's request for recovery of its attorney fees and costs, plaintiff is statutorily entitled to relief. MCL 559.206 provides in relevant part that a default by a co-owner shall entitle the association to an action to recover sums due for damages and injunctive relief. Further, if successful, as is the case here, the association may recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court. In addition, according to the Amended and Restated Bylaws, Article XI, subsection (d), any violations may be subject to the imposition of a fine, as outlined in the by-laws.

V

Based on the foregoing, it is hereby

ORDERED defendants' motion for summary disposition under MCR 2.116(C)(10) is DENIED. It is further

ORDERED that plaintiff's request for relief under MCR 2.116(I)(2) is GRANTED.
Defendants are permanently enjoined from parking their truck in the common courtyard parking area. It is further

ORDERED plaintiff is awarded the reasonable sum of \$5,000.00 representing necessary fees and costs in pursuing this litigation.

SO ORDERED.

DATED:

Peter J. Maceroni,
Circuit Judge

cc: Dominic Silvestri
Judy Schlottman

PETER J. MACERONI
CIRCUIT JUDGE

SEP 13 2006

A TRUE COPY
CARMELLA SABAUGH, COUNTY CLERK

BY: *Carmella Sabaugh* Court Clerk